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Agency Secretary

California Regional Water Quality Control Board

Central Coast Region

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Arnold Schwarzenegger
Governor

February 28, 2006

REVISED HEARING NOTICE AND PRE HEARING ORDER

Concerning

PROPOSED CEASE AND DESIST ORDERS for CERTAIN DISCHARGERS WITHIN THE LOS OSOS PROHIBITION ZONE

PLEASE BE ADVISED THAT this Revised Hearing Notice and Pre Hearing Order establishes a new hearing date, new dates for submittal of documents, and the Water Board Chairman's rulings regarding all submitted requests received as of February 24, 2006.

The California Regional Water Quality Control Board, Central Coast Region (Water Board), will consider whether to adopt Cease and Desist Orders ("CDOs") for 45 properties in Los Osos/Baywood Park, California. Attachment 1 includes a map showing the approximate location of the affected properties. The proposed CDOs require the owners and tenants of the affected properties ("Dischargers") to cease and desist violating the prohibition against discharges from onsite disposal systems (septic systems) in the Los Osos/Baywood Park area by January 1, 2010. The prohibition is contained in the Water Quality Control Plan for the Central Coast Region (Basin Plan). In the interim, the CDOs require the Dischargers to maintain and pump the septic systems to reduce pollutant loading to the groundwater. An example CDO is available on the Water Board's website at <http://www.waterboards.ca.gov/centralcoast>.

The Water Board will hold a **formal**, consolidated hearing on all of the proposed CDOs. The hearing will be held at the following time and place:

DATE AND TIME: April 28, 2006, 10:00 a.m.
PLACE: 895 Aerovista Place, Suite 101,
San Luis Obispo CA 93401

Water Board Chairman's Ruling Regarding Requests for Extension of Document Submittal Due Dates and Requests for Extension of Hearing Date:

These requests are granted in part, as described in this Revised Hearing Notice and Pre Hearing Order, due to mail delays resulting from the tragedy at the Goleta Post Office and Designated Parties' individualized, good faith requests for additional time to review documents and prepare for the hearing.

California Environmental Protection Agency



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Water Board Chairman's Ruling Regarding Requests for Individualized Hearings:

These requests are denied. Although the hearings have been consolidated, each party has the opportunity to present evidence that is relevant to the individual Cease and Desist Order that has been proposed for his or her property. Every party that received a draft Cease and Desist Order will be permitted to do the following: 1) testify themselves, 2) call their own witnesses, 3) submit documents into the record (so long as they have submitted, by April 5, 2006, the actual documents or a list that specifically identifies any documents they wish to "incorporate by reference"), 4) cross-examine other parties' witnesses, and 5) make closing arguments. (See Conduct of Hearing, below). Prior to the start of the hearing, the Chair will determine the order of presentation of evidence by designated parties, when interested persons can testify, and when during the hearing the Board will rule on each of the individual draft Cease and Desist Orders. The Chair will limit repetitious testimony; however, each designated party will have the opportunity to present evidence unique to their situation.

Water Board Chairman's Ruling Regarding Requests to Submit Documents by Reference:

These requests are granted, provided that the "submittal by reference" complies with Title 23, California Code of Regulations, section 648.3. A list of the documents to be incorporated by reference must be submitted by April 5, 2006. Parties will be permitted to incorporate documents by reference that have been identified and submitted in a timely manner by the Prosecution Team, the Los Osos CSD, and any other Designated Party such as a homeowner or tenant.

Water Board Chairman's Ruling Regarding Requests for Designated Party Status:

All requests for Designated Party status are denied, with the exception of the request by the Los Osos CSD, which was previously granted by the Chair. The justification provided in the form letters requesting designated party status (they are all identical) is as follows: *"While I am not an attorney, I know that I can be stopped from arguing a matter that is already decided - even one decided by an administrative hearing. Because the scientific and environmental arguments that I would make at my hearing are most likely going to be made at this hearing, I have an interest in seeing that my arguments are fairly made and fairly received now and that my rights are not prejudiced by this process."* This is not an accurate statement. Those homeowners/tenants who may receive enforcement notices in the future will be able to fully argue their cases regardless of the outcome of the previous enforcement actions or the evidence submitted and ruled on at the previous hearings. Estoppel applies only to persons who are parties to the hearing and have the merits of their own cases adjudicated. The Water Board will respond to other requests for designated party status (those that were not form letters) by individual letters to the requestors.

Parties, Documents and Due Dates

The Designated Parties for this hearing are as follows: the property owners and tenants named in the CDOs, the Los Osos Community Services District, and the Water Board Prosecution Team.¹

¹ The Prosecution Team is described in the memorandum dated January 18, 2006. This memorandum is included as Attachment 2.

All Designated Parties (property owners and tenants named in the CDOs, the Los Osos Community Services District, and the Water Board Prosecution Team) must submit their written comments and all written evidence by **April 5, 2006**. See below for instructions on where to send written submissions and the number of copies required. **Designated Parties making the same arguments are encouraged to submit written or oral testimony, evidence and argument jointly.** Upon the receipt of Public Records Act requests for the names and property addresses of all Designated Parties, the Water Board will release those names and addresses, except the names and addresses of the Designated Parties who submitted sufficient evidence of overriding privacy concerns that justify the withholding of their names under the Public Records Act.

All persons wishing to comment on the proposed CDOs who are not Designated Parties are "interested persons." Comments from interested persons must be submitted by **April 12, 2006**. A comment is a non-evidentiary statement. It may include (1) the policy views and position of the commenter, (2) non-expert analysis of evidence that already has been presented, and/or (3) argument concerning the contents of draft documents. Interested persons may also submit data or other evidence regarding the proposed CDOs.

The Water Board Prosecution Staff must submit its rebuttal, including rebuttal evidence, by **April 19, 2006**.

Designated Parties may submit written responses to interested party comments and evidence by **April 19, 2006**.

Written materials submitted after the applicable due date, or not in compliance with the directions for submitting written materials below, may not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party. Any person seeking to submit late written materials must justify why the materials could not have been submitted earlier. No late submissions will be made part of the record absent a ruling by the Water Board Chair.

Deadline for Submitting Documents: Copies of all written materials, including evidence, comments, and procedural objections or motions, must be received by the recipients listed below by 5:00 p.m. on the applicable due date, at the address below.

Evidence may be incorporated by reference in accordance with California Code of Regulations, Title 23, Section 648.3 as long as the request is submitted in writing by the applicable due date for evidentiary submissions. Only materials already contained in the Water Board's files may be incorporated by reference. A request to incorporate materials by reference must describe the materials you wish to incorporate in sufficient detail to allow the Water Board to identify and locate the specific document(s), as required by Section 648.3. Section 648.3 states:

Public records of the Board that are relevant to the subject of the hearing, and books, reports, and other evidence that have been prepared and published by a public agency, if otherwise admissible, may in the discretion of the Board be received in evidence as exhibits by reference without the necessity of supplying copies to the Board and other

parties, provided the original or a copy is in the possession of the Board and the specific file folder or other exact location where it can be found is identified. The party offering an exhibit by reference shall designate the particular portions on which the party relies. Each exhibit shall be appropriately identified and designated in the record as an exhibit of the party offering the exhibit or an exhibit of Board staff.

The Chair will rule on all requests to incorporate materials by reference at or before the hearing. Any request that does not comply with Section 648.3 will be denied. Designated Parties and interested persons must provide electronic or paper copies of all evidence *except* evidence that is incorporated by reference. Also, Water Board staff will not provide the Board members with copies of any materials incorporated by reference. See below regarding submitting documents, and how to submit copies for Board members.

Conduct of Hearing

All Designated Parties and interested persons may speak at the Water Board hearing, and should orally summarize their written submissions and/or rebut submissions of other Designated Parties and interested persons. **Designated Parties and interested persons providing the same information or arguments are encouraged to make joint presentations.** The Chair will limit repetitive comments, testimony or cross-examination. All persons testifying or making public comments at the hearing must take an oath to tell the truth, under penalty of perjury.

Statements by interested persons who are not Designated Parties will be limited to **two minutes each**. Interested persons may not donate their time to other speakers. At the discretion of the Chair, questions may be addressed to interested persons making comments.

Designated Parties may testify, present witnesses, cross-examine other parties' witnesses and make closing statements. Interested persons do not have these rights. Cross-examination is not limited to matters covered in direct testimony or written submissions. Testimony, cross-examination and argument by Designated Parties must be relevant to the proposed CDOs and may only address matters within the Board's jurisdiction.

Testimony may include expert opinions and analysis. Testimony may also include analysis of studies, reports and scientific literature as long as the studies, reports or scientific literature are in the administrative record (i.e., any person seeking to introduce such testimony must provide copies of these materials by the due date for written submissions).

All Designated Parties will be subject to time limits for oral presentations, including cross-examination. The Water Board will set the time limits in a separate notice or at the hearing. Board members and the Board's advisors may ask questions of Designated Parties, Regional Board staff or interested persons at any time during the hearing. The questions and answers will not count toward any time limits.

The procedures governing Water Board hearings are at Title 23, California Code of Regulations, Division 3, Chapter 1.5 (commencing with Section 647), and are available upon request or at the Water Board office. The California Code of Regulations is also available at www.oal.ca.gov.

Hearings before the Regional Water Board are not conducted pursuant to Government Code Section 11500 et seq.

Directions for Submitting Written Materials

All written materials must be submitted in accordance with the following directions. Failure to follow these directions may result in the materials not being accepted and not being incorporated into the administrative record, as described above.

All written materials must be provided to the Water Board Advisors and Prosecution Staff via e-mail or paper copy at the addresses listed below. The Water Board will post copies of all timely submissions on its website, and will make all reasonable efforts to provide Designated Parties with notice of these submissions. **Designated Parties must provide an e-mail address or request written notification to receive notice of new web postings.** Contact Matt Thompson (information below) to request electronic or paper copies of submissions.

For Water Board Prosecution Staff:

Submit one copy each to:

Lori T. Okun, Senior Staff Counsel, State Water Resources Control Board, Office of Chief Counsel, PO Box 100, Sacramento CA 95812, phone (916) 341-5165, Fax (916) 341-5199, e-mail lokun@waterboards.ca.gov

Roger W. Briggs, Central Coast Water Board Executive Officer, 895 Aerovista Place, Suite 101, San Luis Obispo CA 93401, phone (805) 549-3140, Fax (805) 543-0397, e-mail rbriggs@waterboards.ca.gov.

For the Water Board Advisors:

Submit nine copies to:

Michael Thomas, Central Coast Water Board Assistant Executive Officer, 895 Aerovista Place, Suite 101, San Luis Obispo CA 93401 (805) 542-4623 Fax (805) 543-0397, mthomas@waterboards.ca.gov.

And one copy to: John Richards, Senior Staff Counsel, State Water Resources Control Board, Office of Chief Counsel, PO Box 100, Sacramento CA 95812 (916) 341-5181 Fax (916) 341-5199, jrichards@waterboards.ca.gov

All persons submitting written materials in paper copy are requested to include one electronic copy in Adobe Acrobat (pdf) or Microsoft Office (Word, Excel, Access or PowerPoint) compatible format.

Information Regarding Possible Hearing Panel

In the absence of a quorum, the hearing on this matter will be conducted by a hearing panel of the Water Board, pursuant to California Water Code Section 13228.14. In such event, the panel will consist of at least three of the following Board members: Jeffrey Young, Daniel Press, Gary Shallcross, John Hayashi and Russ Jeffries. The panel will take evidence and make recommendations to the full Water Board for final action at a future date to be determined. This notice also serves as a notice of panel hearing.

If a Hearing Panel conducts the hearing, the Hearing Panel will consider all evidence and comments, and make recommendations to the full Board. A quorum of the Board will consider the Panel's recommendation at a future Board meeting. The Board may adopt, modify, or reject the Panel's recommendation. The Board will not ordinarily accept further new evidence after the panel hearing; thus, you should prepare to present all evidence and argument on April 28, 2006.


Hearing Facilities

The hearing facilities will be accessible to persons with disabilities. Individuals requiring special accommodations are requested to contact Carol Hewitt at (805) 549-3503 at least 5 working days before the hearing. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

How to Obtain Additional Information

Anyone having questions about the proposed Cease and Desist Orders should contact **Matt Thompson at (805) 549-3159 or mthompson@waterboards.ca.gov**. The proposed CDOs and related documents are available for downloading from the Water Board's website at <http://www.waterboards.ca.gov/centralcoast>. Persons who do not have Internet access or would like to receive a hard copy of these documents may review and/or copy these documents at the Water Board's office at the address on page 1 of this notice, weekdays between 8:00 a.m. and 5:00 p.m.

Please bring the above information to the attention of anyone you know who would be interested in this matter.



Michael Thomas, Assistant Executive Officer
February 28, 2006

Attachments:

1. Map of Approximate Site Locations
2. Memorandum from Roger Briggs to Water Board dated January 18, 2006